

LETTER OPINION
99-L-98

November 1, 1999

Mr. Theodore Kessel, Jr.
LaMoure County State's Attorney
PO Box 216
LaMoure, ND 58458-0216

Dear Mr. Kessel:

Thank you for your letter asking about the authority of the LaMoure Police Department to enforce state and local laws at certain city-owned property at Lake LaMoure. You indicate that this property, which is located about four miles south of the LaMoure city limits, was deeded to the city by the State Game and Fish Department in 1995. You first asked whether city police officers have the authority to issue citations for city ordinance violations within the Lake LaMoure property and whether the municipal court has jurisdiction to determine and hear violations of city ordinances there. In 1997 N.D. Op. Att'y Gen. L-159, I noted the following:

As a matter of general rule, municipalities of the state of North Dakota have only such authority as the Legislature chooses to grant. N.D.C.C. §§ 40-06-01(2) and 40-20-05(1) establish the extent of municipal police jurisdiction. Through those sections the Legislature has clearly limited the jurisdiction of city police officers to certain geographical areas in and around the physical limits of the municipality.

This office has consistently held that a police officer employed by a city enjoys peace officer authority to enforce state law for a distance of up to one and one-half miles in all directions outside of the city limits of such city. This office has also consistently held that city police officers have jurisdiction to enforce municipal ordinances only within one-half mile outside of the city limits.

Likewise, this office has consistently opined that the authority of a municipal court to hear extra-territorial violations of city ordinances is limited, consistent with N.D.C.C. § 40-06-01(2), to those violations occurring within one-half mile of the city limits.

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See letter from Attorney General Robert O. Wefald to Vince H. Ficek (April 20, 1983); letter from Attorney General Allen I. Olson to Mike L. Halpern (December 7, 1977). Where the public offense occurs between one-half and one and one-half miles from the city limits, the city police officer may enforce state law but may not refer the matter to municipal court, as city ordinances have no authority beyond the one-half mile city limit. Id. State law offenses occurring beyond the one-half mile territorial jurisdiction of a municipal court would have to be heard in state district court. N.D.C.C. § 27-05-06; N.D. Const. art. VI, § 8.

However, N.D.C.C. § 40-49-01 authorizes a city to receive real estate by gift or devise within its corporate limits or within five miles thereof for use as parks or public grounds. Further, "the jurisdiction of the governing body shall be extended over such real estate" and "[t]he police powers of the municipality shall be extended at once over any real estate acquired in the manner provided in this section." Id. Your letter indicates that the land in question is being used as a park or public recreational grounds.

The quitclaim deed you enclosed with your letter does not disclose the consideration for the grant of land from the State Game and Fish Department to the city. However, a member of my staff contacted the Game and Fish Department and confirmed that the grant of land was, in fact, a gift, and thus the provisions of N.D.C.C. § 40-49-01 appear to be applicable. Consequently, it is my opinion that any such property gifted to the city and used as a park or public grounds and which is within five miles of the corporate limits of the city would be subject to the jurisdiction of the city governing body and to the police powers of the city. It is my further opinion that city police officers would have the power to issue citations for violations of city ordinances at such property located within five miles of the city limits and the municipal court would have jurisdiction over such property within five miles of the city limits for violations of applicable city ordinances.¹

¹ While N.D.C.C. § 40-49-01 extends the jurisdiction and police power of a municipality to parks or public grounds it receives by gift within five miles of its corporate limits, it does not specifically provide that such lands are within the territorial limits of the municipality, unlike the situation presented in 1997 N.D. Op. Att'y Gen. L-159 wherein I noted that extra-territorial city park board land is deemed by virtue of N.D.C.C. § 40-49-12(1) to be for purposes of taxation and for all other purposes within the territorial limits of the municipality and thus the city police officers had authority to enforce city ordinances at and within one-half mile of the

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You also asked several questions concerning cross-deputization of city police officers by the county sheriff or Highway Patrol. These questions remain pertinent because some of the city-owned land at Lake LaMoure may lie beyond five miles of the LaMoure city limits and thus beyond the extended jurisdiction of the city accorded by N.D.C.C. § 40-49-01. You asked whether city police officers must be cross-deputized before they may issue citations for violations of state law on the city-owned property at Lake LaMoure. Because it was determined that N.D.C.C. § 40-49-01 is applicable to the city-owned property at Lake LaMoure located within five miles of the corporate limits of the city of LaMoure, city police officers operating within the five-mile limit have the formal authority as peace officers within that area. N.D.C.C. § 44-08-20(1) provides that peace officers within the state have the authority to "enforce state laws and rules within the jurisdiction of the law enforcement agency by which they are employed." Thus, it is my opinion that under N.D.C.C. § 40-49-01, LaMoure city police officers would not need to be cross-deputized before issuing citations for violations of state law on the city-owned property at Lake LaMoure that is within five miles of the city limits.

You then asked how cross-deputizing (if necessary) may be accomplished in this state. City police officers may be cross-deputized by appointment as a permanent special deputy by the sheriff or may be vested with peace officer authority on a situational basis by any law enforcement agency or officer. N.D.C.C. § 11-15-02 provides for appointment of special deputies:

The sheriff may appoint and qualify special deputies in such numbers as are required by the conditions. Each special deputy shall receive compensation for services rendered and the same mileage allowance as regular deputies, which must be paid by the county within the limits of funds budgeted for such purpose. The sheriff shall have the sole power of appointing special deputies and may remove them at pleasure.

recreational area pursuant to N.D.C.C. § 40-06-01(2) and to enforce state law at and within one and one-half miles of the recreational area pursuant to N.D.C.C. § 40-20-05(1). Because N.D.C.C. § 40-49-01 lacks such a provision, the city of LaMoure's property at Lake LaMoure cannot be considered as being within the territorial limits of the city and the one-half mile and one and one-half mile extensions of police officer authority do not apply outward from the Lake LaMoure property owned by the city.

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In State v. Beilke, 489 N.W.2d 589, 592-93 (N.D. 1992), the North Dakota Supreme Court explained that

[A] special deputy is one who is appointed by the sheriff to exercise special functions for the purpose of either assisting the sheriff or other deputies when they are in need, or acting in their place when they are unavailable. We conclude that the permanent appointment of a municipal police officer as a "special deputy" to act in a "specific or limited situation," when a sheriff or regular deputy requires assistance, is consonant with the plain, ordinary and commonly understood meaning of the words "special" and "deputy." It is also compatible with the purpose of the statute to provide aid to the sheriff under appropriate circumstances. . . . [T]he statute clearly says that a sheriff may "appoint and qualify special deputies in such numbers as are required by the conditions." The "conditions" that justify and authorize the appointment of a special deputy would include the circumstance that it may be difficult or impossible for a sheriff to perform all of the duties of his or her office in person at all times and in all places. . . . We conclude that the statute unambiguously authorizes a sheriff, "as . . . required by the conditions", to appoint municipal police officers as permanent special deputies.

A sheriff is a county officer. N.D.C.C. § 11-10-02. A special deputy would be a deputy county officer. N.D.C.C. § 11-10-13 requires that "[e]ach deputy county officer shall take and subscribe the same oath as the deputy's principal, naming the deputyship, which shall be endorsed upon and filed with the deputy's certificate of appointment." Thus, procedurally under N.D.C.C. § 11-15-02 a sheriff would have to appoint the police officers, in writing, as special deputies, and the special deputies would be required to take the same oath as the sheriff and the oaths must be filed with the deputies' certificates of appointment. N.D.C.C. §§ 11-15-02 and 11-10-13.

The other method for providing peace officer authority to a city police officer is pursuant to N.D.C.C. § 44-08-20(3), which provides that

Peace officers employed by a law enforcement agency within the state have the power of a peace officer in the following circumstances:

. . . .

3. When responding to requests from other law enforcement agencies or officers for aid and assistance. For the purposes of this subsection, such a request from a law enforcement agency or officer means only a request for assistance as to a particular and singular violation or suspicion of violation of law, and does not constitute a continuous request for assistance outside the purview of the jurisdiction of the law enforcement agency by which a peace officer is employed.

In Beilke, the North Dakota Supreme Court discussed the relationship between N.D.C.C. §§ 44-08-20 and 11-15-02, stating that

[t]he fact that a sheriff chooses not to deputize a police officer would not prevent the sheriff from requesting assistance from that officer in a particular instance. That is what section 44-08-20(3) is designed for. Furthermore, NDCC § 44-08-20(4) provides that the authorization to request assistance is "supplemental to other powers and duties conferred upon peace officers." Nowhere does NDCC § 44-08-20 indicate it is either exclusive or a limitation of a sheriff's authority to appoint special deputies pursuant to NDCC § 11-15-02.

489 N.W.2d at 593.

"Section 44-08-20(3), N.D.C.C., authorizes peace officers responding to requests from other law enforcement agencies to provide aid and assistance outside their normal jurisdiction." Mead v. North Dakota Dept. of Transportation, 581 N.W.2d 145, 147 (N.D. App. 1998). The "statutes give a peace officer responding to a request from other law enforcement agencies for aid and assistance for a particular and singular violation of the law, the power of a peace officer, including the power to make a warrantless arrest of an individual upon probable cause to believe the person was driving while under the influence of alcoholic beverages." Id. at 148. Thus, the sheriff could either appoint the LaMoure city police officers as special deputies, or the sheriff or other law enforcement agency or officer could request assistance from the police in an individual case.

Finally, you ask whether the grant of authority under a cross-deputization of city police officers must spell out the laws to be enforced or whether it may be more general. The scope of the grant

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of authority from one law enforcement officer to another through cross-deputization depends on the statutory procedure being utilized. If N.D.C.C. § 11-15-02 is used by a sheriff to appoint special deputies, the special deputies would have all the authority to enforce the law that the sheriff possesses, unless otherwise limited by the sheriff. However, if a city police officer is responding to a request from another law enforcement agency or officers for aid and assistance pursuant to N.D.C.C. § 44-08-20(3), then by its express terms the statute requires that the request be limited to assistance "as to a particular and singular violation or suspicion of violation of law and does not constitute a continuous request for assistance." Id. Thus, it is my opinion that if N.D.C.C. § 44-08-20(3) is being utilized, only the particular violation or violations for which aid and assistance is being requested could be the subject of enforcement by the city police officer acting outside of such officer's normal territorial jurisdiction.

Sincerely,

Heidi Heitkamp
Attorney General

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